

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MALAIKA BROOKS,

Plaintiff,

11 || V.

CITY OF SEATTLE, et al.,

Defendants.

CASE NO. C06-1681RAJ

ORDER

I. INTRODUCTION

This matter comes before the court on the motion (Dkt. # 198) of Plaintiff Malaika Brooks to modify the pretrial schedule and to extend the deadline for providing expert testimony. Neither Ms. Brooks nor any Defendant has requested oral argument. Having considered Ms. Brooks' motion and the documents the parties submitted in support and in opposition, the court GRANTS in part and DENIES in part the motion as stated at the conclusion of this order.

II. DISCUSSION

The completion of discovery in this case has devolved into a morass which the court has addressed in three orders entered from February 25, 2008 to March 24, 2008 (Dkt. ## 173, 183, 191). The second of those orders, entered March 13, 2008, imposed an April 11, 2008 deadline for dispositive motions, and a July 7, 2008 trial date.

1 Ms. Brooks now seeks relief from that schedule. She requests (1) a May 4 date for
 2 filing expert disclosures, (2) a May 11 deadline for filing dispositive motions, (3) more
 3 time to respond to Defendants' March 26 motion for summary judgment, and (4)
 4 deadlines for motions in limine, the pretrial order, trial briefs, and other pretrial filings.
 5

6 **A. Expert Disclosures**

7 The court originally set October 11, 2007 as the date for “[d]isclosure of expert
 8 testimony under FRCP 26(a)(2).” (Dkt. # 17). Ms. Brooks sought relief from that
 9 deadline on October 9, 2007, asking the court to impose a November 27, 2007 deadline.
 10 (Dkt. # 70). After the parties repeatedly delayed a hearing on Ms. Brooks' motion, the
 11 court heard argument on the parties' discovery dispute on November 20, 2007.¹ In the
 12 minute entry memorializing the hearing, the court struck the October 11 expert disclosure
 13 deadline and stated that it would “reset the deadline after the parties' discovery disputes
 14 are resolved.” (Dkt. # 59).

15 So far as the record reveals, neither Ms. Brooks nor the Defendants considered the
 16 deadline for expert disclosures again until Ms. Brooks filed the instant motion on April 3.
 17 For example, when the court entered an order (Dkt. # 173) on February 25, 2008 that
 18 resolved all pending discovery motions, imposed a schedule for specific discovery tasks,
 19 and barred other discovery, no party requested leave to submit expert disclosures.
 20 Indeed, both parties moved to reconsider the February 25 order, and neither party
 21 mentioned expert discovery. Ms. Brooks filed an eight-page motion for reconsideration
 22 on March 11 in which she did not raise any issue regarding expert discovery.
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24 On March 13, 2008, the court set an April 11 deadline for filing dispositive
 25 motions and a July 7 trial date. (Dkt. # 183). The court imposed no deadline for expert
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27
 28 ¹Prior to November 30, 2007, the Honorable James L. Robart presided over this action.

1 disclosures, because, as noted above, no party had raised the issue. The parties were
2 aware, or should have been, that expert testimony is expected to conclude before fact
3 discovery, and certainly before filing dispositive motions. Nonetheless, the court's
4 March 13 order setting an April 11 dispositive motion deadline did not lead to a request
5 from either party for more time to produce expert disclosures.
6

7 By default, Fed. R. Civ. P. 26(a)(2)(C)(i) requires expert disclosures "at least 90
8 days before the date set for trial," unless otherwise ordered by the court. When the court
9 set trial for July 7, expert disclosures were due 90 days earlier, on April 8, 2008. Ms.
10 Brooks suggests that she could not have produced disclosures by that date because of the
11 court's prior order permitting only limited discovery. Ms. Brooks does not acknowledge
12 that between November 20, 2007 and April 3, 2008, she made no request to the court to
13 be allowed to pursue expert discovery, nor does she acknowledge that no order of the
14 court prevented her from consulting with experts and developing expert testimony.
15

16 Nonetheless, Ms. Brooks now seeks a May 4 deadline for providing expert
17 disclosures, a deadline that would necessarily delay dispositive motions and trial by
18 several months. Her request might have succeeded if she had identified particular expert
19 testimony on which she wishes to rely, in addition to an explanation of why she was
20 unable to provide the testimony earlier. Ms. Brooks provides neither an identification of
21 expert testimony on which she wishes to rely, nor justification for her delay in disclosing
22 the testimony. She instead requests the following broad and amorphous opportunity to
23 disclose expert testimony:
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25 [P]laintiff should be given an opportunity to file expert reports and writing
26 addressing police practices, taser training and supervision, and the policies
27 and procedures of the City with respect to the supervision, training and
28 discipline of police officers, and its practices concerning review of citizens'
complaints of misconduct of Seattle police officers processed by the OPA,
OPAA, and reviewed by the OPARB.

1 Pltf.'s Mot. at 5. Put more succinctly, she asks for an opportunity to file expert reports
2 on virtually any topic relevant to her claims against the City, and some topics which
3 appear to have no relevance to her claims. In her motion, Ms. Brooks provided no detail
4 regarding the expert testimony she wished to introduce. She did not name any expert, or
5 provide any evidence that she has chosen any expert witness. She did not identify a
6 specific topic on which she wanted to introduce expert testimony. She did not point to
7 any specific prejudice that would accrue to her if she could not introduce expert
8 testimony.

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10 The only justification Ms. Brooks offers for her broad request is that she did not
11 expect to obtain transcripts from the depositions of four witnesses until early April. She
12 offers no explanation of how the lack of transcripts prevented her from filing adequate
13 expert disclosures. *See Tatum v. City & County of San Francisco*, 441 F.3d 1090, 1100
14 (9th Cir. 2006) (denying motion for continuance based on late depositions where party
15 failed to “refer to any specific fact in these depositions or explain why the information
16 contained in them” raised a new need for discovery). She offers no explanation for why
17 she did not timely offer expert witness disclosures along with a request to supplement
18 those disclosures after the completion of late discovery. Although she suggests that she
19 needs expert testimony, in part, to respond to a pending summary judgment motion, she
20 offers no detail about what assertions in the motion require expert testimony to oppose.

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22 In addition, Ms. Brooks asks to “supplement” the record with an “expert report
23 from a medical professional addressing her personal injuries.” Pltf.'s Mot. at 5. Ms.
24 Brooks was injured in 2004. Her personal injuries have been a focus of this suit from the
25 outset. Her motion is devoid of any reason that she could not have completed all expert
26 medical testimony much sooner.

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1 Under these circumstances, the court declines to provide additional time for Ms.
2 Brooks to provide expert disclosures. This ruling is without prejudice, however, to a
3 proper request under Fed. R. Civ. P. 56(f) to obtain expert testimony necessary to oppose
4 Defendants' summary judgment motions. The court emphasizes, however, that Rule
5 56(f) requires a party to give "specified reasons [that] it cannot present facts essential to
6 justify its opposition" to a summary judgment motion. *See Tatum*, 441 F.3d at 1100 ("A
7 party requesting a continuance pursuant to Rule 56(f) must identify by affidavit the
8 specific facts that further discovery would reveal, and explain why those facts would
9 preclude summary judgment."). On the record before the court, Ms. Brooks has not
10 approached the showing that Rule 56(f) requires. If she seeks relief under Rule 56(f), she
11 must provide a declaration from the expert witness(es) on which she purports to rely
12 identifying the subjects of his or her testimony, she must specifically point out why such
13 testimony is necessary to oppose the summary judgment motion, and she must
14 specifically explain why she was unable to disclose the proposed expert discovery
15 sooner.² *See Chance v. Pac-Tel Teletrac Inc.*, 242 F.3d 1151, 1161 n.6 (9th Cir. 2001)
16 ("[W]e will only find that the district court abused its discretion if the movant diligently
17 pursued its previous discovery opportunities, and if the movant can show how allowing
18 additional discovery would have precluded summary judgment.") (citation omitted).
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23 ²The documents that Ms. Brooks filed on April 14, 2008 fall short of this standard. In the
24 documents, she contends that Defendants' summary judgment motions rely on expert testimony
25 regarding the discharge of the taser that the police officer Defendants used on her. It is not
26 apparent whether she wishes to provide rebuttal expert testimony, or instead to strike the
27 purported defense expert's testimony for failure to comply with Fed. R. Civ. P. 26. There is no
28 evidence regarding when the substance of the purported defense expert's testimony was provided
to her. There is no evidence as to why she could not have designated a rebuttal expert much
sooner. *See Pfingston v. Ronan Eng'g Co.*, 284 F.3d 999, 1005 (9th Cir. 2002) ("The failure to
conduct discovery diligently is grounds for the denial of a Rule 56(f) motion."). These
observations are without prejudice to Ms. Brooks timely amending her Rule 56(f) request.

1 **B. Remaining Requests**

2 Ms. Brooks seeks additional time to respond to Defendants' pending summary
3 judgment motion. For the reasons discussed above, there is no reason to grant the
4 request. Since Ms. Brooks filed her motion, however, Defendants have filed an
5 additional motion for summary judgment. The court will consider those motions
6 simultaneously. For that reason, the court renotes the first of those motions (Dkt. # 192)
7 for May 2, 2008. Local Rules W.D. Wash. CR 7(d)(3) will govern the timing of Ms.
8 Brooks' oppositions to both motions.³

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10 Ms. Brooks seeks additional time to file summary judgment motions. As with her
11 other requests, she offers no explanation of why she needs additional time. She also does
12 not state that she wishes to file a summary judgment motion or what topics the motion
13 would address. The court denies her request.

14 Finally, Ms. Brooks requests that the court impose deadlines for pretrial filings.
15 The court will do so at the conclusion of this order.

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26 ³On April 14, Ms. Brooks filed an opposition to the first of Defendants' summary
27 judgment motions. At her option, she may either rely on this opposition, or file a superseding
28 opposition in accordance with the briefing schedule provided in Local Rules W.D. Wash. CR
7(d)(3).

III. CONCLUSION

For the reasons stated above, the court GRANTS Ms. Brooks' motion (Dkt. # 198) in part, and DENIES it in part. The court RENOTES Defendants' first motion for summary judgment (Dkt. # 192) for May 2, 2008. The court imposes the following pretrial schedule:

All motions in limine must be filed by June 13, 2008
(and noted on the motion calendar seven judicial days thereafter pursuant to CR 7(d)(2))

Agreed Pretrial Order due June 25, 2008

Pretrial conference June 26, 2008
at 3:30 p.m.

Trial briefs, jury instructions, and voir dire due July 1, 2008

Length of Trial 5 days

Dated this 16th day of April, 2008.

Richard A. Jones

The Honorable Richard A. Jones
United States District Judge